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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 74.

MRS. LOUISE HARRIS MOORE, *Petitioner,*

v.

THE UNITED STATES.

On Petition for Writ of Certiorari to the Court of Claims.

PETITION FOR REHEARING.

J. C. MURPHY,
Counsel for Petitioner.

803 Citizens and Southern Bank Bldg.,
Atlanta, Georgia.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Comes now the above named petitioner, Mrs. Louise Harris Moore, and presents this her petition for a rehearing of the entitled cause, and in support thereof respectfully shows:

An order denying the petition for a writ of certiorari was entered by the Court October 13, 1941.

Petitioner was required to pay the income taxes due on her husband's income out of her private personal estate. The question presented is one of public importance. The supplemental memorandum filed for the United States dis-

closes that eight hundred sixty-nine assessments in the joint names of husbands and wives are outstanding for pre-1938 tax years involving an aggregate tax liability of $2,793,649.86.

In addition to the decisions by the United States Circuit Courts of Appeals cited in the brief in support of the petition for a writ of certiorari, it is believed that the decision below conflicts with the decision of this Court in the case of *Hoeper* v. *Tax Commission of Wisconsin,* 284 U. S. 206.

This Honorable Court in the case of *Heiner, Collector,* v. *Donnan,* 285 U. S. 312, discussed the decision in the following language:

> "In Hoeper v. Tax Commission, 284 U. S. 206, this court had before it for consideration a statute of Wisconsin which provided that in computing the amount of income taxes payable by persons residing together as members of a family, the income of the wife would be added to that of the husband and assessed to and payable by him. We held that, since in law and in fact the wife's income was her separate property, the state was without power to measure his tax in part by the income of his wife."

The Court's attention is further directed to the decision of this Honorable Court in the case of *Heiner, Collector,* v. *Donnan,* 285 U. S. 312, in which the Court said:

> "This is to measure the tax on A's property by imputing to it in part the value of the property of B, a result which both the Schlesinger and the Hoeper cases condemn as arbitrary and as denial of due process of law. Such exaction is not taxation but spoliation. 'It is not taxation that governments should take from one the profits and gains of another. That is taxation which compels one to pay for the support of the government from his own gains and of his own property.' United States v. Baltimore, and O. R. Co., 17 Wall. 322, 326."

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the judg-

ment of the United States Court of Claims be, upon further consideration, reversed.

Respectfully submitted,

J. C. MURPHY,
Counsel for Petitioner.

803 Citizens and Southern Bank Bldg.,
Atlanta, Georgia.

CERTIFICATE OF COUNSEL.

I, J. C. MURPHY, counsel for the above named petitioner, Mrs. Louise Harris Moore, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

J. C. MURPHY,
Counsel for Petitioner.